

## **INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

This handout directs itself to all ten questions of the FOCI Certification. Each “Yes” answer must be qualified by supporting information concerning the business practice engaged in by the Subcontractor with foreign sources. Each question of the FOCI Certification has some degree of interrelationship with the other questions. For example, Question 2: “Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own ten percent or more of any foreign interest?” If this answer is affirmative, it will definitely have an impact on Question 7, the income question. The FOCI Certification questionnaire is designed not only to explore specifics but also, when viewed as a whole, to give a comprehensive overview of the FOCI position of the facility in its entirety, including the Offeror’s/Bidder’s present corporation and “ultimate” parent entity.

A mere affirmative answer to one or more of the questions is not sufficient. Supporting documentation for each is mandatory and must be in sufficient detail to fully explain the answer. Keep these “keys” in mind: the interrelationship of each question and the absolute necessity of full explanations. A FOCI submission package is required for the following types of business enterprises:

- Partnerships
- New Contracts
- Academic Institutions
- Sole Proprietorships
- Corporations
- Existing Contracts
- Other persons or organizations performing classified work or having access to classified information

Please submit your latest Annual Report and 10K Report, as well as 10Q Reports for all portions of your fiscal year up to the recent quarter, if your company prepares them.

### **Question #1:**

- a. Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5% or more of the outstanding shares of any class of your organization's equity securities? If yes:
  - (1) Identify the percentage of any class of stock or other securities issued which are owned by foreign persons, broken down by country. Include indirect ownership through one or more intermediate level(s) of subsidiaries. Indicate voting rights of each class of stock.
  - (2) Are there shareholder agreements? If yes, attach a copy(ies), and if none, so state.
  - (3) Indicate whether a copy of SEC Schedule 13D/13G report has been received from any investor. If yes, attach a copy(ies).

**NOTE:** Ownership of less than 5% should be included if the holder is entitled to control the appointment and tenure of any management position.

- b. (For entities which do not issue stock): Has any foreign person directly or indirectly subscribed 5% or more of your organization's total capital commitment? If yes:
- (1) Identify the percentage of total capital commitment which is subscribed by foreign persons.
  - (2) Is there an agreement(s) with the subscriber(s)? If yes, attach a copy(ies), and if none, so state.

Question #2:

Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10% or more of any foreign interest? If yes:

- (1) Identify the foreign interest by name, country, percentage owned, and personnel who occupy management positions with the organizations.
- (2) If there are personnel from your organization who occupy management positions with the foreign firm(s), identify the name(s), title, and extent of involvement in the operations of the organizations (to include access to classified information).

Question #3:

Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials? If yes:

- (1) Identify the foreign person(s) by name, title, citizenship, immigration status and clearance or exclusion status.
- (2) Attach copies of applicable by-laws or articles of incorporation which describe the affected position(s). However, if you have already provided such copies to the Cognizant Security Agency Industrial Security Representative, so state.

Question #4:

Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization? If yes:

- (1) Identify the foreign person(s) by name, title, citizenship, and all details concerning the control or influence.

**NOTE:** If any foreign person(s) have such power, this question shall be answered in the affirmative even if such power has not been exercised, and whether or not it is exercisable through ownership of your facility's securities, if such power may be invoked by contractual arrangements or by other means.

Question #5:

Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)? If yes:

- (1) For each instance, provide the name of the foreign person, country, percentage of gross income derived, and nature of involvement, including:
  - (a) whether defense/nuclear related or not
  - (b) involvement with classified or export controlled technology
  - (c) compliance with export control requirements
- (2) Where the organization has a large number of involvements and where these involvements are not defense/nuclear related and represent a small percentage of gross income, the explanation can be a generalized statement addressing the totals by country.

**NOTE:** We do not expect and will not require the contractor to ask every customer if he/she falls within the NISPOM definition of a foreign person. We will ask the contractor to provide ongoing security education to those individuals who negotiate and/or administer such agreements regarding their responsibilities to report agreements with a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question to "the best of his/her knowledge or "through his/her best efforts".

Question #6:

Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)? If yes:

- (1) Provide your overall debt-to-equity ratio (in percentage).
- (2) With respect to indebtedness or liability to a foreign person, indicate to whom indebted or liable, what collateral has been furnished or pledged, and any conditions

or covenants of the loan agreement. If stock or assets have been furnished or pledged as collateral, provide a copy of the loan agreement or pertinent extracts thereof (to include procedures to be followed in the event of default).

- (3) If any debentures are convertible, provide specifics.
- (4) If loan payments are in default, provide details.
- (5) This question should be answered in the affirmative if the debt is with a U.S. entity that is owned or controlled either directly or indirectly by a foreign person. If unknown, so state.

**NOTE:** As stated above, we do not expect and will not require the contractor to ask every lender if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle lending arrangements regarding their responsibilities to report any such arrangements with a foreign person lender, to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #7:

During your last fiscal year, did your organization derive:

- a. 5% or more of its total revenues or net income from any single foreign person?
- b. In the aggregate 30% or more of its revenues or net income from foreign persons?

If yes to either part of the question:

- (1) Provide overall percentage of income derived from foreign sources by country, nature of involvement, and type of services or products.
- (2) Indicate if any single foreign source represents in excess of 5% of total revenues or net income.
- (3) Indicate whether any classified information is involved.
- (4) State whether facility is in compliance with applicable export control requirements.

**NOTE:** As previously stated, we do not expect and will not require the contractor to ask every customer if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle information about company revenues regarding their responsibility to report revenues

derived from a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #8:

Is ten percent or more of your organization's securities held "nominee shares," in "street names" or in some other method which does not disclose the beneficial owner? If yes:

- (1) Identify each foreign institutional investor holding 10% or more of the voting stock by name and address and the percentage of stock held.
- (2) Indicate whether any investor has attempted to, or has exerted any control or influence over appointments to management positions or influenced the policies of the organization.
- (3) Include copies of SEC Schedule 13D/13G.

Question #9:

Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)? If yes:

- (1) Provide the name, title, citizenship, immigration status and clearance or exclusion status on all such persons.
- (2) Identify, by name and address, each foreign organization with which such persons serve and indicate the capacity in which they are serving.
- (3) Include a Statement\* of Full Disclosure of Foreign Affiliations for every cleared individual who is a representative of a foreign interest.

\* Representative of Foreign Interest Statement

**NOTE:** We expect the contractor to be able to answer the question fully for those individuals holding such positions with his/her foreign subsidiaries and any foreign interests. However, we do not expect and will not require the contractor to ask every individual to ascertain if he/she is serving as a director, officer or manager of a foreign person. We will ask the contractor to provide ongoing security education to all key management personnel of their responsibilities to report serving as an interlocking director or in any other type of positions with a foreign person to the best of their knowledge. The contractor will be certifying the response to this

question as being to "the best of his/her knowledge" or "through his/her best efforts".

Question #10:

Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization? If yes:

- (1) Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.

**FOCI Responses**

Upon verification that the FOCI information submitted by your firm is complete, the University must forward the FOCI submission to the DOE Safeguards & Security Division (SSD), where the information will be checked and verified by the SSD FOCI Manager. After reviewing and analyzing the information, the DOE SSD FOCI Manager will state, in writing, to your firm the results of the security review.